

August 27, 2010

Honorable Jon D. Levy, Associate Justice
Maine Supreme Judicial Court
P. O. Box 368
Portland, Maine 04112-0368

RE: Report of the Standing Committee on Pro Bono and Public Service

Dear Justice Levy:

Enclosed is the final Report of the Standing Committee on Pro Bono and Public Service. The Standing Committee greatly appreciates the input and guidance that you and Chief Justice Saufley provided. As a co-chair, I truly appreciated the leadership and dedication of Gigi Sanchez. Without her efforts, the Standing Committee would still be struggling to tackle the numerous challenges presented. The members of the Standing Committee are dedicated to the goal of pro bono and public service. Their insights and input form the basis of this Report.

As always, it has been a rewarding experience to work with you and the Justice Action Group.

Please let me know if you have any questions about the Report.

Sincerely,



Virginia E. Davis

VED:pjn

Enclosure

cc: Geraldine G. Sanchez, Esq.
Julie Deacon

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REPORT OF THE STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE

The Justice For All: A Report of the Justice Action Group (“Report”) is a forward-thinking, strategic plan which addresses the challenges, opportunities and actions to address the profound problem of providing justice for Maine residents who cannot afford representation in Maine’s courts. The Report provides the data which demonstrates the tremendous burden that falls on individuals and the judicial system and the costs to civil society if the system of justice does not work for all participants.

The Report was published in October 2007. Since then, the Report’s documented needs have increased significantly as the downturn in the economy has reduced funding for the Judicial Branch and legal service providers, as well as impacted the finances of many law firms and members of the private bar.

The Report contains 8 Recommendations. Recommendation Number 4 is “Increase the Number of Individuals Who Have the Assistance of a Legal Professional.” A principal strategy of this recommendation is “Evaluate the need for a new structure to provide leadership for pro bono and public service on a statewide basis.” (Report, pg. 28) The Recommendation provides that a permanent Standing Committee on Pro Bono and Public Service (“SCPB”) should

be created and that the Maine State Bar Association (“MSBA”) should provide the leadership and staffing for this effort.

The MSBA established the SCPB (the membership list is attached as Exhibit A). The SCPB had several meetings to discuss the recommendations, suggestions and initiatives set out in the Report, as well as ideas and recommendations brought forward by SCPB members. These include:

- Creating recognition and prestige for lawyers and firms committed to justice issues such as a recognition program modeled on the Empire State Counsel Program; greater public recognition of pro bono service; education; and media opportunities for both the public and new lawyers to understand the significance of pro bono service for the American democracy.
- Increasing collaboration with the Judicial Branch to reduce obstacles to pro bono service.
- Considering the effectiveness of requiring the reporting of pro bono service.

- Providing financial incentives and reducing financial hurdles for lawyers to work in public and non-profit legal service entities or to provide pro bono and low-bono services.
- Promoting the option of providing unbundled or limited legal assistance to low-income clients;
- Encouraging Maine law firms to commit their attorneys to pro bono representation.

The SCPB evaluated all of these strategies (see the Report, pgs 28-31, attached as Exhibit B, for the complete list), as well as related ideas and challenges set forth in Recommendations 2, 3, 6 and 7 of the Report.

The Committee met in the whole, as subcommittees and in smaller groups. The Chair had numerous discussions with Justice Action Group members individually, and committee members, individually and in small groups. The final meeting of the SCPB occurred on April 7, 2010 with Justice Levy and Chief Justice Saufley attending.

As a result of the work of the SCPB and the MSBA, the following positive developments have occurred:

- The MSBA, through its publications, the Supplement and the Bar Journal, provides its members with information about the legal services providers, and opportunities for pro bono service. The legal service providers also work closely with MSBA and its sections. For example, Legal Services for the Elderly has greatly expanded its list of attorneys willing to take pro bono cases by working with MSBA's Elder Law Section. These activities will continue and may evolve into a web-based system when MSBA overhauls its web pages.
- The MSBA has provided CLEs designed to educate lawyers about the legal service providers and opportunities and rewards of pro bono service at its annual and summer meetings.
- Maine law firms are establishing pro bono committees.
- Working with the Judicial Branch and other interested parties, MSBA has helped educate the Maine legislature about the importance of access to justice issues, including taking positions advocating for the Clifford Commission legislation and the protection/importance of the Judicial Branch budgets.

- MSBA continues to host the awards luncheon at its annual meeting to recognize Maine lawyers and firms providing significant pro bono services through the Volunteer Lawyers Project.
- MSBA continues to provide education to its members about unbundled legal services.
- MSBA is establishing a Pro Bono Committee. The Committee will be chaired by a member of the Board of Governors and will facilitate MSBA communications and initiatives with the Maine Bar Foundation, the Justice Action Group (“JAG”), the legal services providers and the private bar regarding pro bono efforts and initiatives. The Committee will report to the Board of Governors on its current status and projects.

Based on its work, the SCPB submits the following recommendations to JAG for further action:

- While all of the recommendations in the Report are worthy and desirable, resources are limited. Thus, JAG should focus on one or two initiative at a time.

- The initiative that stands out as the highest priority is the need to create recognition and prestige around pro bono work. There is general agreement that Maine would benefit from a program such as New York’s Empire State Counsel Program. There is also agreement that the audience needs to be larger than lawyers, law firms and the judiciary. The public needs to be educated so that pro bono work is recognized and valued by the community. While lawyers who contribute time through the Volunteer lawyers Project are recognized at the MSBA Annual Meeting awards luncheon, lawyers who provide pro bono services through other providers also should be recognized. Finally, a system should be developed to recognize lawyers who provide pro bono legal services to low income Mainers outside of the established legal services providers’ programs.
- The second primary focus should be on supporting and developing further opportunities for limited representation or reduced fee (“low bono”) arrangements by the private bar.
- Maine lawyers are generous with the hours they provide to pro bono services and their financial support of the legal service providers. Pro bono initiatives must be supportive of and recognize both kinds of

contributions and be mindful that efforts to promote either from of contribution not provide an unintended disincentive for the other.

- The consensus is that mandatory pro bono is counter-productive and that mandatory reporting of pro bono also is counter-productive. This recommendation should not be pursued further.
- With the submission of this document, the SCPB will cease its responsibilities and the members will be released with gratitude and thanks for their commitment to the goals of the SCPB and JAG
- The MSBA will continue to work with the Judicial Branch and JAG to find avenues to streamline/facilitate the process so that lawyers with pro bono cases can maximize their efficiency.
- The MSBA Pro Bono Committee will continue to work with JAG to identify, prioritize and implement initiatives designed to
 - (1) recognize, reward, encourage and promote pro bono services and
 - (2) increase limited representation or reduced fee arrangements.
- The MSBA will continue to work with JAG to find creative ways to meet the challenges of providing access to justice for low-income

Maine residents; however, these efforts must recognize that access to justice is only truly achieved through adequate legal representation.

The Standing Committee on Pro Bono and Public Service recognizes and thanks the Justice Action Group for its leadership and the vision provided in Justice For All: A Report to the Justice Action Group. The members of the SCPB found this effort challenging and rewarding.

Respectfully submitted,

Geraldine Sanchez

Virginia E. Davis

Exhibit A

Membership

Gigi Sanchez, Chairperson

Martica Douglas, Executive Committee

Peter Felmly, Executive Committee

Jennifer Hoopes, Executive Committee

Colleen Khoury, Executive Committee

Christopher Largay, Executive Committee

Judge MaryGay Kennedy, Judicial Representative

Brett Baber

Ginger Davis

Mary-Austin Dowd

MaryBeth Fougere

Bill Harwood

Juliet Holmes-Smith

Ralph Lancaster

Margaret O'Keefe

Victoria Powers

Roger Putnam

Ron Schneider

Matthew Stein

Hal Stewart

Nolan Tannous

Caroline Wilshusen

Shane Wright

Exhibit B

shown that legal representation makes a major difference in whether a party wins in cases decided in the courts. Where basic human needs are at stake, regardless of the forum, it is therefore essential that all individuals be afforded access to publicly-financed counsel to represent them.

B. Evaluate the need for a new structure to provide leadership for *pro bono* and public service on a statewide basis

1. JAG should advocate the creation of a permanent Standing Committee on *Pro Bono* and Public Service to promote and facilitate the engagement of the Maine bar – firms, professional organizations of the bar, and individual attorneys – in bridging access to justice gap for low-income people. The Committee should be modeled after the American Bar Association’s Standing Committee on *Pro Bono* and Public Service and similar entities in other states, and should be situated within the Maine State Bar Association. The Committee’s activities might include spearheading efforts to shape government or Bar policy and professional rules around *pro bono*; facilitating coordination among stakeholders including the courts, legal aid providers that utilize *pro bono* attorneys, the Bar Association and other organized private bar groups; promoting and recognizing the efforts of the Maine Bar to provide access to justice; in cooperation with the Legal Aid Technology Resources Center, providing support to individual *pro bono* attorneys and law firms, including services such as technology training, a resource clearinghouse and mentoring programs; and organizing efforts to obtain *pro bono* services from other professionals such as mediators, social workers and accountants.

The Standing Committee would have representation from *pro bono* attorneys, members of court advisory groups, legal aid providers, the Maine State Bar Association, the University of Maine School of Law, mediators and the courts, and should have adequate support staff to carry out its initiatives. It would coordinate with and periodically report to JAG on its activities and initiatives.

Rationale: Over the years, Maine’s most valuable resource in efforts to ensure access to justice for our State’s most vulnerable residents has been the thousands of private attorneys who undertake *pro bono* representation of those unable to pay for a lawyer. Historically, Maine has been a leader in *pro bono* participation by private attorneys. However, the changing nature of law firm practice in Maine, the reduction in volunteerism in society as a whole, and growing economic pressures on the profession are challenging Maine’s leadership in this area. The promise of a recent Maine Bar Rule authorizing the provision of “unbundled” legal services has yet to be fully realized. And, increasingly, the Maine Volunteer Lawyers Project and other legal aid providers have struggled to find *pro bono* representation for the growing body of cases, especially in the area of family law. The Standing Committee on *Pro Bono* and Public Service would help to achieve greater efficiencies through increased coordination and could explore new, perhaps more effective, models for expanding *pro bono* services.

C. Develop strategies to support and expand *pro bono* services by private attorneys. The Standing Committee on *Pro Bono* and Public Service should consider the following approaches, among others:

1. Create a level of distinction and prestige around attorneys committed to access to justice. Possible strategies include:

- Creation of a certification program to recognize *pro bono* contributions of attorneys and law firms (like the Empire State Counsel program of the New York State Bar Association)
- Loan forgiveness and other attorney recruitment tools could be tied to certification
- Expanded and enhanced public recognition of the legal service contributions of attorneys and judges
- Promotion of “branding” messages to enhance the distinction and prestige of public service and *pro bono* work
- Develop more opportunities for interaction between judges and new attorneys and senior attorneys to highlight the importance of *pro bono* and public service work
- Highlight “access to justice” issues as an important component of educational, networking and social programs within the bar

2. Increase collaboration with the courts to reduce disincentives to *pro bono* service. Some court procedures and processes create barriers to the provision of *pro bono* representation by the private bar. Examples of areas that might be streamlined or better coordinated with the courts to reduce these disincentives include: improving calendaring; reducing required court appearances; increasing use of telephonic or video hearings; streamlining the application for filing fee waivers (or making them automatic) for *pro bono* cases; and increased use of technology. There should also be an ongoing forum for collaboration and dialogue between the courts and *pro bono* providers to facilitate identification of other ways in which the courts could decrease disincentives and increase incentives for the private bar to provide *pro bono* representation.

3. Evaluate the efficacy of *pro bono* reporting. The Standing Committee on *Pro Bono* should conduct a thorough evaluation of the efficacy of a change to the Maine Rules of Professional Responsibility to require the reporting of *pro bono* work by private attorneys as part of the annual registration process with the Board of Bar Overseers. Input should be obtained from a broad cross-section of the private bar before any rule is proposed. It is important to recognize that mandatory reporting may not increase the amount of *pro bono* work being performed by the private bar which has already demonstrated an outstanding commitment to *pro bono* services and the funding of legal service agencies. On the other hand, mandatory reporting would provide vital statistics to demonstrate to the public and the Legislature that the private bar is already providing concerted efforts to address the needs of those who cannot afford legal services. It would also provide a concrete means for individual attorneys to evaluate their own commitment to *pro bono* service on a systematic basis.

4. Create financial incentives and relief for attorneys to provide *pro bono* and reduced-fee services and to work in legal services. Many attorneys experience significant financial barriers which limit their ability to provide significant *pro bono* services and deter them from entering or remaining in legal service positions. These include high levels of law school debt and narrow profit margins, especially in solo, small and/or rural practices. The Standing Committee on *Pro Bono* should work with the Maine State Bar Association, through such sections as the New Lawyers Section and the Pro Bono Committee of the Women’s Law Section, to develop strategies to provide financial incentives and other monetary relief to enable attorneys to provide *pro bono* and reduced fee services, and to work in legal services.

Strategies to be considered include:

- **Expanded loan repayment assistance programs** with eligibility based upon provision of *pro bono* representation to underserved groups or work in legal services
- **Law school or post-graduate fellowships** to encourage the provision of *pro bono* representation or work in legal services
- **Tax deductions or credits at state and federal levels to offset law school loans** for practitioners who provide *pro bono* representation or work in legal services
- **Charitable business tax deductions** at state and federal levels for the provision of *pro bono* representation
- **Enhanced awareness of the “emeritus lawyer” bar registration classification** which relieves senior attorneys from paying the annual registration fee in exchange for *pro bono* services

5. Promote expanded provision of unbundled or limited legal assistance to low-income clients through

- **Development of educational materials and resources to assist lawyers in providing “unbundled” legal services.** Examples of resources include the development of risk management information for lawyers, training sessions, and video and consumer education materials
- **Exploration of legal “clinics” staffed by trained attorneys and volunteers.** The format envisioned is an educational presentation on a particular legal topic for pre-registered, pre-screened attendees, followed by one-on-one assistance
- **Expand the existing model of the Maine Volunteer Lawyers Project Helpline,** which sets up phone appointments between self-represented family law clients and volunteer attorneys and law students to provide legal advice and brief assistance, to new areas of law

6. Encourage Maine law firms to increase their commitment to *pro bono* representation by firm attorneys by: assisting law firms to develop and implement *pro bono* policies, to identify and develop *pro bono* practice areas to which they make a firm-wide commitment, and to develop and utilize their *pro bono* work in their marketing and recruiting efforts; encouraging friendly competition among firms concerning their *pro bono* contributions (through recognition, a statewide *pro bono* pledge program or other means); encouraging law firms to include access to justice messages in their internal training and mentoring programs (e.g., regularly invite providers to speak to attorneys about legal service needs and opportunities); promoting a law firm culture which instills the expectation that each attorney will participate in legal service activities and contribute a certain number of *pro bono* hours; recognizing and celebrating legal service contributions of their attorneys.

Other Strategies

- **Facilitate the provision of so-called “low bono” services,** for which a reduced fee is negotiated, by private attorneys and firms

- **Expand student *pro bono* programs** to match students with *pro bono* opportunities and to recognize student achievement in this area
- **Increase collaboration among the University of Maine School of Law, legal aid providers and private attorneys to provide role models for public service law and the integration of *pro bono* work** within a law practice through panel discussions, guest speakers and other programs
- **Establish a clearinghouse where continuing legal education and other training opportunities could be posted** and accessed by a broader audience, including legal and consumer education workshops to advocacy organizations, low income individuals and self-represented litigants
- **Develop mentoring programs to pair senior lawyers with new lawyers to provide assistance on *pro bono* cases**

Recommendation 5: Expand Resources to Reduce the Unmet Need for Legal Assistance

Principal Strategies

A. Expand efforts to increase direct appropriations at the federal, state, county, and local levels. To accomplish this, the legal service community and its supporters must enhance awareness among policymakers and the public of the funding needs for civil legal services and should:

1. Establish a joint Governmental Funding Committee comprised of representatives of the legal aid providers, JAG, the Maine Bar Foundation, the Maine State Bar Association (including volunteer attorney/lobbyists) and others outside the legal community to identify, develop and coordinate legislative and executive branch initiatives to expand funding sources for civil legal aid programs. The Committee would oversee efforts to preserve and expand direct appropriations for civil legal aid in each session of the Maine Legislature, and convene specific legislative task forces as appropriate to support specific initiatives in the Legislature.

2. Seek direct State appropriations to expand and enhance provision of legal aid to low-income persons.

3. Expand lobbying and legislative education efforts, focusing primarily on the Maine Legislature. The Committee should meet periodically with legislative leadership and develop plans to educate and inform other governmental decision-makers about the need for increased support for civil legal aid.

4. The Committee should review State license and court fees for opportunities to add surcharges to support *pro bono* legal aid and/or to pursue allocations of revenues generated by existing and additional fees. Possibilities that warrant further study include:

- **Surcharges on probate filing fees,** in appropriate cases
- **New or expanded *pro hac vice* fees.** Because the overall efficiency of the State's court system will be enhanced through the provision of